

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Petitions for Waiver of Section 54.703 )  
Filed by: Gateway USA Holding Company ) CC Docket No. 96-45  
Inc., Cosmos Telecom Marketing, Inc., )  
Sitel, Inc., Microdevices Worldwide, Inc., )  
and Startec Global Communications Corp. )

**REPLY COMMENTS**

Gateway USA Holding Company Inc., Cosmos Telecom Marketing, Inc., and Sitel, Inc., ("the Gateway Affiliates") and Microdevices Worldwide, Inc. ("Microdevices")(collectively, "Petitioners"), herein submit these Reply Comments to the Opposition of AT&T Corp. ("AT&T") filed on May 22, 1998 ("Opposition") in response to the Commission's Public Notice in the above captioned proceeding.<sup>1</sup>

AT&T argues in its Opposition that good cause for a waiver of Section 54.703 of the Commission's Rules, 47 C.F.R. § 54.703 (1997), does not exist and that clarification of the Commission's rules is unnecessary. As shown below, AT&T's arguments--a continuation of its historical opposition against callback services--are entirely without merit. The relief requested

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<sup>1</sup> Petitions for Waiver of Section 54.703 Filed by: Gateway USA Holding Company Inc., Cosmos Telecom Marketing, Inc., Sitel, Inc., Microdevices Worldwide, Inc., and Startec Global Communications Corporation, CC Docket No. 96-45, DA 98-865, Public Notice (May 8, 1998)("Public Notice"). Apparently, only AT&T filed comments in response to the Public Notice.

*Or*

by the Gateway Affiliates and Microdevices should be granted.<sup>2</sup>

## I. DISCUSSION

In its Opposition, AT&T explains that because only carriers with interstate services are subject to Universal Service Fund ("USF") contributions, if the Petitioners want to compete on an equal basis with foreign providers, they should "adjust the way they do business" and forego offering interstate services.<sup>3</sup> However, AT&T mistakenly believes that such action would eliminate the competitive disadvantage which the Petitioners face *vis-a-vis* their foreign competitors. In fact, such action would have the opposite effect.

Even if the Petitioners eliminated the provision of interstate services to customers, they would still be required to contribute to the USF indirectly. Currently, underlying carriers are required to include in their contribution bases revenues derived from providing services to resellers which provide only international services.<sup>4</sup> As a result, the underlying carriers usually flow through the USF payments to such resellers, based on the amount of services purchased by the reseller, often accompanied by an administrative mark-up. Thus, even if the Petitioners eliminate their interstate traffic, as suggested by AT&T, they would still be required to contribute indirectly to the USF. On the other hand, the Petitioners' main competitors, foreign

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<sup>2</sup> See In Re Microdevices Worldwide, Inc., Petition for Partial Waiver, or in the Alternative, Clarification of Universal Service Contribution Requirements Contained in Section 54.703 of the Commission's Rules (March 26, 1998)("Microdevices Petition"); In Re Gateway USA Holding Company Inc., Cosmos Telecom Marketing, Inc., and Sitel, Inc., Petition for Partial Waiver or, Alternatively, Clarification of Section 54.703 of the Commission's Rules (April 22, 1998)("Gateway Petition")(collectively, "Petitions").

<sup>3</sup> Opposition at 5.

<sup>4</sup> See Universal Service Worksheet (FCC Form 457) Instructions at 12-13.

carriers, do not contribute to the USF either directly or indirectly.

Ironically, foregoing the provision of interstate services would actually increase the Petitioners' competitive disadvantage. Currently, Petitioners are allowed to exclude from their contribution bases revenues derived from foreign originating, foreign terminating services.<sup>5</sup> However, the Petitioners' underlying carriers may not be able to determine how much of the traffic sold to the Petitioners originates and terminates in foreign points. Thus, the Petitioners would likely be billed for 100% of the services purchased for resale. As such, adjusting the way they do business to forego all interstate traffic would result in a significant increase in USF payments by the Petitioners.<sup>6</sup> Therefore, taking the action suggested by AT&T would not eliminate the competitive disadvantage Petitioners face *vis-a-vis* foreign competitors, but would actually increase it.

Even if foregoing all interstate traffic allowed Petitioners to compete with foreign carriers on an equal basis, as AT&T erroneously suggests, the Commission has made clear that Petitioners should not have to adjust the way they do business due to USF contribution requirements. In the Commission's own words, it does not "want contribution obligations to shape business decisions, and [it does] not want to discourage carriers from continuing to offer their common carrier services."<sup>7</sup> Further, the Commission recognized that if it became aware of any significant competitive concerns in the future that it would revisit the issue rather than

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<sup>5</sup> In Re Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 779 (1997)(appeal pending)("Report and Order").

<sup>6</sup> Over 72% of all of the Gateway Affiliates', and over 50% of Microdevices' traffic originates and terminates outside of the U.S.

<sup>7</sup> Report and Order at ¶ 795. See also id. at ¶ 850.

expect companies to change the way they do business.<sup>8</sup> Therefore, even if adjusting the way they do business would eliminate the competitive disadvantage which Petitioners face, the Commission has made clear that this is not the answer.

The Opposition argues that the relationship between a carrier's interstate revenues and its USF contribution is irrelevant to the amount of a carrier's contribution.<sup>9</sup> The Petitioners disagree. The relationship between interstate revenues and USF contributions clearly demonstrates the Petitioners' unique circumstances. Both the Gateway Affiliates' and Microdevices' Universal Service liability will be more than three times their 1997 interstate revenues.<sup>10</sup> As such, extension of Section 54.703 of the Commission's Rules to the Petitioners' special circumstances produces arbitrary and irrational results which justify a partial waiver of Section 54.703 of the Commission's Rules.

AT&T further claims that the fact that the Petitioners are required to make USF contributions, while their competitors are not, is not a sufficient basis for a waiver.<sup>11</sup> On the contrary, as shown in the Petitions, such discrimination demonstrates the Petitioners' unique circumstances and that a grant of the Petition is in the public interest.<sup>12</sup> The Commission agreed in its Report to Congress by stating that "competitive neutrality concerns

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<sup>8</sup> Id. at ¶ 779.

<sup>9</sup> Opposition at 4.

<sup>10</sup> Gateway Petition at 5; Microdevices Petition at 4.

<sup>11</sup> Opposition at 4-5.

<sup>12</sup> Microdevices Petition at 5-11; Gateway Petition at 5-12.

warrant refraining from imposing contribution requirements on certain providers...."<sup>13</sup> Thus, the discriminatory effects of Section 54.703 on the Petitioners is a sufficient basis for a waiver of the Commission's Rules.

AT&T claims that a grant of the Petitions would transgress Congressional intent.<sup>14</sup> Although it may be true that Congress intended a broad contribution base to support universal service, Congress also required contributions to be made on "an equitable and nondiscriminatory basis."<sup>15</sup> As described above and in the Petitions, application of Section 54.703 to the Gateway Affiliates and Microdevices is clearly not equitable and nondiscriminatory.<sup>16</sup> Further, Congress clearly could not have intended Section 254(d) of the Telecommunications Act of 1996 ("1996 Act") to give foreign carriers a competitive advantage over U.S. carriers. Thus, by eliminating the discriminatory effects of the contribution requirements on the Petitioners, a grant of the requested relief would further Congressional intent, not transgress it.

The Opposition states that if the Commission granted the partial waiver or clarification requested by the Petitioners, the obligations of all remaining contributors would increase.<sup>17</sup> If this were true, other contributors would have also filed comments in this proceeding. The fact

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<sup>13</sup> In Re Federal-State Joint Board on Universal Service, Report to Congress in CC Docket 96-45, FCC 98-67, ¶ 136 (April 10, 1998)("Report to Congress"). See Gateway Petition at 9-10.

<sup>14</sup> Opposition at 4.

<sup>15</sup> 47 U.S.C. § 254(d)(1997).

<sup>16</sup> Gateway Petition at 8-9; Microdevices Petition at 7-8. Application of the contribution requirements to the Petitioners is not "equitable" because it ignores the enormous disparity between their USF liability and their limited interstate revenues. Application of the contribution requirement to Petitioners is also not "nondiscriminatory" since foreign, competing carriers are exempted altogether, affording them a significant competitive advantage.

<sup>17</sup> Opposition at 4 and 6.

that only AT&T opposed a grant of the Petitions demonstrates that the obligations of remaining contributors will not increase to a noticeable degree.<sup>18</sup> In fact, the contributions of both the Gateway Affiliates and Microdevices combined equal to only 0.0097% (or less than a hundredth of a percent) of projected total contributions for 1998. As such, a grant of the requested partial waiver or clarification will have no discernable impact upon Universal Service funding.<sup>19</sup>

AT&T argues that because all U.S. callback providers are subject to the same contribution requirements, the Petitioners are not competitively disadvantaged by the Commission's Rules. However, as described above, due to the nature of callback services, the Gateway Affiliates' and Microdevices' main competitors are not other U.S. carriers, but rather foreign providers.<sup>20</sup> Because such foreign providers do not offer U.S. interstate services, they are not required to make USF contributions. Thus, Section 54.703 of the Commission's Rules places the Petitioners at a competitive disadvantage *vis-a-vis* their main competitors, foreign providers.

AT&T baldly asserts that the requested clarification is unnecessary because the Commission's rule is clear and unambiguous.<sup>21</sup> However, as demonstrated in the Petitions, paragraph 779 of the Report and Order is ambiguous.<sup>22</sup> Paragraph 779 of the Report and Order states, in part: "Communications that are billed to *domestic end users* should be included in the

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<sup>18</sup> AT&T's motives for opposing the Petitions are discussed supra at n. 26.

<sup>19</sup> See Gateway Petition at 7; Microdevices Petition at 7.

<sup>20</sup> Gateway Petition at 5; Microdevices Petition at 5.

<sup>21</sup> Opposition at 6.

<sup>22</sup> Gateway Petition at 11; Microdevices Petition at 10.

revenue base, including country direct calls when provided between the United States and a foreign point."<sup>23</sup> The quoted sentence is ambiguous insofar as it implies that communications that are billed to *foreign end users* may be excluded from a carrier's contribution base. Thus, due to the ambiguity of the above-quoted sentence, clarification that carriers may exclude foreign billed revenues from their contribution base for calls originating in foreign points and terminating in the U.S. is necessary.

Further, AT&T states, without supporting arguments or citation, that there is no exclusion for foreign-billed revenues and that any other reading would be contrary to Section 254(d) of the 1996 Act and the Report and Order.<sup>24</sup> On the contrary, a grant of the requested clarification is consistent with both Section 254(d) of the 1996 Act and the Report and Order. The requested clarification addresses the specific competitive advantage which Section 54.703 affords foreign carriers with respect to foreign originating, U.S. terminating traffic. Further, revenues for domestic interstate calls and calls originating in the U.S. and terminating in foreign points would still be included in the contribution bases. Thus, the clarification is narrowly tailored to eliminate the competitive advantage of foreign carriers without placing U.S. carriers in a competitive disadvantage *vis-a-vis* U.S. callback providers. As such, the requested clarification is consistent with Section 254(d) of the 1996 Act, as well as the Commission's Principle of Competitive Neutrality.<sup>25</sup>

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<sup>23</sup> Report and Order at ¶ 779 (emphasis added)(footnotes omitted).

<sup>24</sup> Opposition at 6.

<sup>25</sup> Report and Order at ¶¶ 43-48. See also Gateway Petition at 9; Microdevices Petition at 8.

The Commission has clearly acknowledged the important public interest benefits which flow from callback.<sup>26</sup> For example, the Commission has recognized that,

callback advances the public interest, convenience and necessity by promoting competition in international markets and driving down international phone rates. We believe it is in the best interests of consumers--and eventually of economic growth--around the world.<sup>27</sup>

The Commission has also stated that it would "continue to encourage U.S. carriers to provide these types of alternative services" and would "support U.S. carriers" in developing and implementing such innovations which provide "competitive pressures in foreign markets."<sup>28</sup>

Granting the Petitions at issue in this proceeding would continue to encourage innovative service providers to make available callback services. On the other hand and as shown in the Petitions, a denial of the relief requested threatens the very viability of callback as a business opportunity. Because the Petitioners' foreign competitors are not burdened with the Universal Service contribution requirement, the Petitioners are unable to pass on or flow through the assessment to foreign end users without losing substantial market share to those foreign competitors. In today's increasingly competitive global telecommunications markets, the

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<sup>26</sup> It should be noted that AT&T has historically opposed callback services before the Commission. See In Re VIA USA, LTD, Order, Authorization and Certificate, 9 FCC Rcd 2288 (1994); In Re VIA USA, LTD, Order on Reconsideration, 10 FCC Rcd 9540 (1995) ("VIA USA Order"). See also In Re INTERNATIONAL TELECOM, LTD., Order, Authorization and Certificate, 11 FCC Rcd 12750 (1996); and In Re MIRIRIS SERVICES, INC., Order, Authorization and Certificate, 10 FCC Rcd 4020 (1995).

<sup>27</sup> VIA USA Order at ¶ 1.

<sup>28</sup> In Re Policy Statement on International Accounting Rate Reform, Policy Statement, 11 FCC Rcd 3146, ¶ 20 (1996). See also In Re International Settlement Rates, Report and Order, 12 FCC Rcd 19806, ¶ 11 (1997).

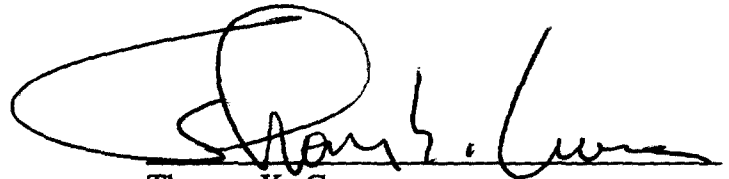


application of Section 54.703 to callback operators--when it does not also apply to their foreign competitors--stands to potentially drive U.S. callback firms out of the marketplace.

## II. CONCLUSION

As demonstrated above, the arguments raised by AT&T in its Opposition are without merit. The relief sought by the Gateway Affiliates and Microdevices in their respective Petitions should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", is written over a horizontal line.

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March 29, 1998

**CERTIFICATE OF SERVICE**

I, Elizabeth Holowinski, an attorney with the Law Offices of Thomas K. Crowe, P.C., do hereby certify that on this 29th day of May, 1998, a copy of the foregoing "Reply Comments" was served by U.S. first class mail, postage prepaid, to the parties listed below.

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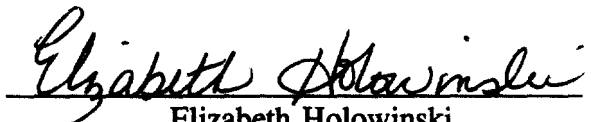
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